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*Attorneys for The Diana Melton Trust, Dated 12/05/05*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM**

The Diana Melton Trust, Dated 12/05/05 (“Diana Melton Trust”), by and through its attorneys, hereby objects to the Notice of Trustee’s Determination of Claim dated October 19, 2009 (“Determination Letter”), attached as Exhibit A, as described herein.

## BACKGROUND

1. Diana Melton Trust is a “customer,” as defined by the Securities Investor Protection Act of 1970 (“SIPA”), of Bernard L. Madoff Investment Securities, LLC (“BMIS”).

2. The Diana Melton Trust’s final BMIS statement for Account Number 1ZA699, dated November 30, 2008, states that it owns securities valued at \$1,120,005.21 (“Final BMIS Statement”).

3. On December 11, 2008, the above-captioned liquidation proceeding was commenced against BMIS, pursuant to SIPA. *See Order, Securities and Exchange Commission v. Madoff*, No. 08-10791 (S.D.N.Y. Dec. 15, 2008) (ordering relief under SIPA and transferring proceeding to the United States Bankruptcy Court for the Southern District of New York) [Dkt. No. 4]. Irving Picard was appointed Trustee (“BMIS Trustee”), charged with overseeing the liquidation of BMIS and processing customer claims for money pursuant to SIPA. *Id.*; 15 U.S.C. 78ffff-1(a).

4. On December 23, 2008, the Court issued an Order directing the Trustee to disseminate notice and claim forms to BMIS customers and setting forth claim-filing deadlines. *See Order* [Dkt. No. 12]. Upon information and belief, the BMIS Trustee disseminated notice and claim forms to BMIS’s customers in accordance with the Court’s Order.

5. The December 23, 2008 Order further provided that, to the extent the BMIS Trustee disagrees with the amount set forth on a customer claim form, the BMIS Trustee “shall notify such claimant by mail of his determination that the claim is disallowed, in whole or in part, *and the reason therefor . . .*” *See Order* at 6 (emphasis added) [Dkt. No. 12].

6. On or about April 27, 2009, The Diana Melton Trust submitted a customer claim form to SIPC for Account Number 1ZA699 (Exhibit B) (“The Diana Melton Trust Customer

Claim").<sup>1</sup> The Diana Melton Trust's Final BMIS Statement was submitted with The Diana Melton Trust Customer Claim. *See* The Diana Melton Trust Customer Claim (Exhibit B).

7. On October 19, 2009, the BMIS Trustee sent The Diana Melton Trust the Determination Letter disallowing The Diana Melton Trust's claim in its entirety, rather than allowing the claim in the amount of \$1,120,005.21, the total amount that The Diana Melton Trust claimed. *See* Determination Letter (Exhibit A).

8. The Diana Melton Trust hereby objects to the Determination Letter for the reasons described below.

### **GROUNDS FOR OBJECTION**

9. First Objection. The Determination Letter fails to comply with this Court's December 23, 2008 Order, which directs the BMIS Trustee to satisfy customer claims and deliver securities in accordance "with the Debtor's books and records." Dec. 23, 2008 Order at 5 [Dkt. No. 12]. Included with The Diana Melton Trust's Customer Claim was its final BMIS statement showing a final balance of \$1,120,005.21. *See* The Diana Melton Trust Customer Claim (Exhibit B). The Final BMIS statement is the best evidence of the amount owed based on the Debtor's books and records. Accordingly, the claim should be allowed in the full amount of \$1,120,005.21.

10. Second Objection. The Trustee has set forth no legal basis for disallowing The Diana Melton Trust Customer Claim in full as filed. The only explanations set forth in the Determination Letter are that (1) "[n]o securities were ever purchased for your account," and (2) that "because you have withdrawn more than was deposited into your account, you do not have a positive 'net equity' in your account and you are not entitled to an allowed claim in the BLMIS

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<sup>1</sup> In accordance with the Court's Order dated October 20, 2009 [Dkt. No. 533], Claimant's

liquidation proceeding.” Determination Letter at 1-2 (Exhibit A). Neither of these purported grounds for disallowance have any statutory or other legal basis. Moreover, the Determination Letter:

- (a) does not clearly provide “the reason” for the disallowance, as required by the Court’s December 23, 2008 Order, *see* Order [Dkt. No. 12];
- (b) is inadequate to rebut the *prima facie* validity of The Diana Melton Trust Customer Claim as provided in Section 502(a) of the Bankruptcy Code and Fed. R. Bankr. P. 3001(f); and
- (c) violates general principles of applicable law requiring that an objection to a proof of claim set forth, at a minimum, the relevant facts and legal theories upon which the objection is based. *See, e.g.*, Collier on Bankruptcy ¶ 3007.01(3) (15th ed.) (“[A]n objection to a claim should . . . meet the [pleading] standards of an answer. It should make clear which facts are disputed; it should allege facts necessary to affirmative defenses; and it should describe the theoretical bases of those defenses.”); *In re Enron Corp.*, No. 01-16034, 2003 Bankr. LEXIS 2261, at \*25 (Bankr. S.D.N.Y. Jan. 13, 2003) (same).

11. Third Objection. 15 U.S.C. Section 78fff-2(b) provides that a customer’s claim shall be allowed in the amount of the customer’s “net equity.” 15 U.S.C. § 78fff-2(b). Upon information and belief, the Trustee objects to The Diana Melton Trust Customer Claim on the ground that “net equity” should be determined by principal contributed to the account less any withdrawals, without regard to any gains reflected in the Final BMIS Statement or prior BMIS statements. *See* Determination Letter Table 1. See also “Another View: Unwinding Madoff

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personal identification data has been redacted from Exhibit B.

Fraud Fairly," Deal Blog. NY times.com (May 6, 2009). This is incorrect for the following reasons:

(a) The Trustee's construction of the statute ignores SIPA's express language which defines "net equity" as

the dollar amount of the account or accounts of a customer, to be determined by --

(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date, all securities positions of such customer (other than customer name securities reclaimed by such customer); minus

(B) any indebtedness of such customer to the debtor on the filing date;

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15 U.S.C. § 78l(l)(11). The Trustee's proposed formulation has no support in the language of the statute or interpreting case law and in fact, adds words and concepts to the statute which do not exist.

(b) SIPA's legislative history emphasizes Congress' intention that the statute protect customer expectations by ensuring that customers of retail brokerage firms can rely on their account statements. The BMIS statements received by The Diana Melton Trust stated that it owned a list of blue chip securities. It makes no difference whether the securities were purchased:

A customer generally expects to receive *what he believes* is in his account at the time the stockbroker ceases business. But because securities may have been lost, improperly hypothecated, misappropriated, *never purchased*, or even stolen, it is not always possible to provide to customers that which they expect to receive, that is, securities which they maintained in their brokerage account. . . . By seeking to make customer accounts whole and returning them to customers in the form they existed on the filing

date, the amendments . . . would satisfy customers' legitimate expectations . . . .

S. Rep. No. 95-763, at 2 (1978) (emphasis added). While there may be a basis to disallow customer claims for wholly fictitious securities of nonexisting entities, here the securities set forth on The Diana Melton Trust's Final BMIS Statement and prior statements were those of actual companies listed on the stock exchange.

(c) The Diana Melton Trust deposited funds in BMIS in the expectation the amount would grow, its account statements showed such growth, and the balance on its Final BMIS Statement reflects the benefit of this bargain. The Trustee's formula is an improper and wholly inadequate measure of loss. In *Visconsi v. Lehman Brothers, Inc.*, 244 Fed. Appx. 708 (6th Cir. 2007), the Court declined to set aside an arbitration award that appeared to have applied an expectancy measure of damages against a successor in a Ponzi scheme case, and rejected the "money in/money out" formula as not reflecting the expectations of the parties. The Court explained:

Lehman's out-of-pocket theory misapprehends the harm suffered by Plaintiffs and the facts of this case. Plaintiffs gave \$21 million to Gruttaduria [the dishonest broker], not to hide under a rock or lock in a safe, but for the express purpose of investment, with a hope -- indeed a reasonable expectation -- that it would grow. Thus, the out-of-pocket theory, which seeks to restore to Plaintiffs only the \$21 million they originally invested less their subsequent withdrawals, is a wholly inadequate measure of damages. Had Gruttaduria invested Plaintiffs' money as requested, their funds would like grown immensely, especially considering that Plaintiffs invested primarily throughout the mid-1990s, which, had they hired an honest broker . . . , would have placed their money in the stock market during one of the strongest markets in recent memory. In fact, the fictitious statements issued by Lehman, which were designed to track Plaintiffs' funds as if they had been properly invested, indicate that Plaintiffs' accounts would have grown to more than \$37.9 million (even accounting for the withdrawal of more than \$31.3 million). Plaintiffs thus could have reasonably believed that they were entitled to the full \$37.9 million

balance shown, regardless of the amounts of their previous deposits and withdrawals.

*Visconsi*, 244 Fed. Appx. at 713-14 (emphasis added). This applies precisely to The Diana Melton Trust's claim.

(d) The Trustee's Determination Letter is contrary to SIPC's own policies and practices, as reflected in the sworn testimony of Stephen Harbeck, SIPC's president and CEO, and its actions in similar liquidation proceedings. For example, in the *New Times* SIPA liquidation, in the context of discussing claims filing deadlines, Harbeck acknowledged that SIPC would replace securities listed on customer account statements, even if the securities had never been purchased:

Harbeck: [I]f you file within sixty days, you'll get the securities, without question. Whether -- if they triple in value, you'll get the securities. . . . Even if they're not there.

Court: Even if they're not there.

Harbeck: Correct.

Court: In other words, if the money was diverted, converted --

Harbeck: And the securities were never purchased.

Court. Okay.

Harbeck: And if those positions triple, we will gladly give the people their securities positions.

Transcript at 37-39, *In re New Times Securities Services, Inc.*, No. 00-8178 (Bankr. E.D.N.Y. July 28, 2000) (Exhibit C). The Second Circuit's discussion of SIPC's claims processing in *New Times* further indicates that, with respect to customers who thought they were invested in listed securities, SIPC paid customer claims based on the customers' final account statements, even where the securities had never been purchased:

Meanwhile, investors who were misled . . . to believe that they were investing in mutual funds that in reality existed were treated

much more favorably. Although they were not actually invested in those real funds -- because Goren never executed the transactions -- the information that these claimants received on their account statements mirrored what would have happened had the given transaction been executed. As a result, the Trustee deemed those customers' claims to be "securities claims" eligible to receive up to \$500,000 in SIPC advances. The Trustee indicates that this disparate treatment was justified because he could purchase real, existing securities to satisfy such securities claims. Furthermore, the Trustee notes that, if they were checking on their mutual funds, the "securities claimants," . . . could have confirmed the existence of those funds and tracked the funds' performance against Goren's account statements.

*In re New Times Secs. Servs.*, 371 F.3d 68, 74 (2d Cir. 2004); *see also* Brief of Appellant SIPC at 23-24, *In re New Times Sec. Servs., Inc.*, No. 05-5527 (Dec. 30, 2005) (arguing that under SIPA "reasonable and legitimate claimant expectations on the filing date are controlling even where inconsistent with transactional reality" such as when the customer receives a confirmation reflecting a purchase, "even where the purchase never actually incurred and the debtor instead converted the cash deposited by the claimant to fund that purchase").<sup>2</sup> The Diana Melton Trust is situated no differently from the "securities claimants" discussed by the Second Circuit. Accordingly, its claim should be recognized in full.

12. In the event that the Court should determine that claimed gains on deposited funds should not be allowed, then in the alternative, The Diana Melton Trust is entitled to recover interest on such deposited amounts. Such interest is required as a matter of state law, and the United States Supreme Court has determined that in bankruptcy cases, creditor claims, including the right to interest, are determined by state law. *See Travelers Cas. & Sur. Co. of Am. v. PG&E*, 549 U.S. 443, 450-51 (2007) ("[W]e have long recognized that the 'basic federal rule' in

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<sup>2</sup> There are similar statements in S. Rep. No. 95-763, at 2 (1978) (SIPA seeks to make customers whole even if securities of customers are "lost ... misappropriated, never purchased or even stolen"); H.R. Rep. No. 95-746, at 21 (1977) (customer expects to receive what he believes is in his account even if securities were "never purchased").

bankruptcy is that state law governs the substance of claims, Congress having generally left the determination of property rights in the assets of a bankrupt's estate to state law.”).

(a) Under New York law, which is applicable here, funds deposited with the Debtors under these circumstances are entitled to interest. *See, e.g.*, N.Y.C.P.L.R. § 5004; N.Y. Gen. Oblig. § 5-501, *et seq.* Accordingly, Customer claims should be recalculated by adding interest to all funds deposited by customers such as The Diana Melton Trust.

(b) Under New York law, which is applicable here, customers are entitled to prejudgment interest and any returns the Debtors earned on the deposited funds under principles of unjust enrichment. Accordingly, Customer claims should be recalculated by adding the amounts earned by the Debtors on The Diana Melton Trust’s deposits. *See, e.g., Steinberg v. Sherman*, No. 07-1001, 2008 U.S. Dist. LEXIS 35786, at \*14-15 (S.D.N.Y. May 2, 2008) (“Causes of action such as . . . conversion and unjust enrichment qualify for the recovery of prejudgment interest.”); *Eighteen Holding Corp. v. Drizin*, 701 N.Y.S.2d 427, 428 (1st Dep’t 2000) (awarding prejudgment interest on claims for unjust enrichment and conversion).

13. Fourth Objection. The BMIS Trustee’s action in reducing the amount shown on The Diana Melton Trust’s Customer Claim by any prior gains reflected on its final BMIS statement or prior BMIS statements is an attempt to avoid such gains without alleging any grounds for avoidance or proving that such gains are avoidable under the Bankruptcy Code’s avoidance provisions. As such, any such disallowance is improper and unjustified, and the Determination Letter should be stricken. *See Fed. R. Bankr. P. 7001(1); 7008.*

14. Fifth Objection. The Trustee’s determination assumes that BMIS never earned funds and therefore all gains reported to customers were “fictitious.” This assumption is contrary to fact. There is significant evidence that, at some time, BMIS was at least in part a

legitimate business and therefore all or a portion of the gains were not fictitious. The burden is on the Trustee to show that BMIS never earned any amounts to support customer gains and, if at some point it did earn funds, the dates when it ceased to do so. The Trustee is required to state and prove when the Ponzi scheme began.

15. Sixth Objection. The Diana Melton Trust was required to pay significant income taxes and/or estate taxes on distributions which the Trustee has alleged are fictitious. The Trustee has justified his proposed method of calculating claims is fair and reasonable because fictitious gains should not compete dollar for dollar with claims for funds actually deposited by customers, and his proposed method equalizes the treatment of all customers. This justification is not correct insofar as customers did not have the use of reported but fictitious gains because of required income tax payments. Even assuming *arguendo* the Trustee's method is correct, The Diana Melton Trust's customer claims should be adjusted by adding all amounts it actually paid as income taxes and/or estate taxes on allegedly fictitious gains to equalize its treatment with that of other customers. See *SEC v. Byers*, No. 08-7104, 2009 U.S. Dist. LEXIS 63741, at \*11-13 (S.D.N.Y. 2009) (in equitable distribution proceeding, allowing claims for reinvestment of fictitious profits to equitably treat reinvesting customers as compared with customers receiving distributions).

16. Seventh Objection. The Diana Melton Trust's present BMIS account (account number 1ZA699) is a successor to, or assignee or transferee from, one or more prior accounts ("Transferor Accounts"). Upon information and belief, at the time The Diana Melton Trust was established, a request was made to BMIS to create a new account for The Diana Melton Trust, however, a new BMIS account was never created. In calculating the "net equity" for The Diana Melton Trust's BMIS account, the BMIS Trustee's accounting does not reflect the actual

amounts transferred from the Transferor Accounts to The Diana Melton Trust's account as reflected on the records of The Diana Melton Trust, the contemporaneous documents furnished to The Diana Melton Trust at the time of the transfer, and/or the records of BMIS which reflected the transfer. Instead, the BMIS Trustee has redetermined each transferred amount in accordance with his "money in/money out" formula (as described in the Third Objection) so that the transferred amount is limited by the amount of "money in/money out" (*i.e.*, deposits less withdrawals) in the Transferor Account at the time the transfer occurred. There is no basis in law or fact for such a result or redetermination. The Trustee has not alleged any factual basis for claiming that The Diana Melton Trust is not a bona fide transferee and purchaser, acting in good faith. The Trustee has not alleged any basis for reducing the balance in the Transferor Accounts at the time of the transfer under applicable state law, which is governing pursuant to the decision in *Travelers Cas. & Sur. Co. of Am. v. PG&E*, 549 U.S. 443 (2007), and has not alleged any basis to avoid or reduce said balance pursuant to the avoidance powers of the Bankruptcy Code. Instead, the reduction (a) is an attempt to assert an avoidance power retroactively, to assert such a power as against the owner of the Transferor Accounts who is not a party to this Case; (b) has no basis in any statute or rule and no such statute or rule is stated by the BMIS Trustee; (c) makes no attempt to satisfy the requirements which are applicable to actions under such avoidance powers including applicable statutes of limitations and indeed fails to identify any provision of the avoidance powers which is applicable; (d) is subject to the various defenses set forth in the avoidance powers; and (e) is an improper attempt to impose liability on a transferee of the initial transferee without alleging or satisfying the conditions of section 550(b) of the Bankruptcy Code. The Trustee should be required to redetermine The Diana Melton Trust's claim by recognizing the full amounts transferred from any Transferor Accounts.

17. Eighth Objection. The Determination Letter purports to calculate amounts transferred from one or more Transferor Accounts to The Diana Melton Trust's account based on certain withdrawal transactions in the Transferor Account(s) for which The Diana Melton Trust has no or incomplete records and for which the Trustee has not provided any records. Many of these withdrawal transactions allegedly occurred more than fifteen years ago. Even assuming that The Diana Melton Trust ever had access to records concerning the Transferor Account(s), it is unreasonable to anticipate the customers would maintain records of accounts for long periods of time given (a) general limitations on record retention requirements under tax law and other applicable rules governing record retention; (b) the apparent safety and solvency of BMIS; and (c) the fact that historical records such as those in question are usually available from financial institutions, including broker-dealers, upon request. Under these circumstances, the Trustee should be required to prove that the alleged withdrawal transactions in the Transferor Account(s) occurred by furnishing the appropriate records to The Diana Melton Trust and, absent such records, the Trustee should be required to redetermine The Diana Melton Trust's claim by recognizing the full amounts transferred from any Transferor Accounts..

#### **RELIEF REQUESTED**

18. For the reasons stated herein, The Diana Melton Trust Customer Claim should be allowed in its entirety.

19. For the reasons stated herein, the Court should direct SIPC to issue immediate payment to The Diana Melton Trust in the amount of \$1,120,005.21 plus interest from the date of the Determination Letter without imposing conditions to payment which are not authorized or warranted.

20. The BMIS Trustee's determination amounts to an improper disallowance of a claim that has *prima facie* validity. *See* Bankruptcy Code § 502(a). The BMIS Trustee has offered no factual or legal basis for his Determination. The BMIS Trustee's Determination Letter, and the objections contained therein, should be stricken, or alternatively, the BMIS Trustee should describe his position in detail including all relevant facts, legal theories, and authorities. Upon the filing of such a statement, this matter will be a contested proceeding under Rule 9014, and The Diana Melton Trust will file a response.

21. The Diana Melton Trust requests such other relief as may be just and equitable.

### **CONCLUSION**

22. The Diana Melton Trust reserves the right to revise, supplement, or amend this Objection, and any failure to object on a particular ground or grounds shall not be construed as a waiver of The Diana Melton Trust's right to object on any additional grounds.

23. The Diana Melton Trust reserves all rights set forth Rule 9014, including, without limitation, rights of discovery. *See* Fed. R. Bankr. P. 9014.

24. The Diana Melton Trust reserves all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever.

25. The Diana Melton Trust incorporates by reference all reservations of rights set forth in The Diana Melton Trust Customer Claim.

Dated: November 17, 2009

s/ Jonathan M. Landers

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*Attorneys for The Diana Melton Trust,  
Dated 12/05/05*

## Exhibit A

**BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

In Liquidation

**DECEMBER 11, 2008<sup>1</sup>**

**NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM**

October 19, 2009

Diana Melton Trust, Dated 12/5/05

**Redacted**

Dear Diana Melton Trust, Dated 12/5/05:

**PLEASE READ THIS NOTICE CAREFULLY.**

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC (“BLMIS”) is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. (“SIPA”), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claim on BLMIS Account No. 1ZA699 designated as Claim Number 008648:

Your claim for securities is **DENIED**. No securities were ever purchased for your account.

Further, based on the Trustee’s analysis, the amount of money you withdrew from your account at BLMIS (total of \$727,500.00), as more fully set forth in Table 1 annexed hereto and made a part hereof, is greater than the amount that was deposited with BLMIS for the purchase of securities (total of \$320,000.00). As noted, no securities were ever purchased by BLMIS for your account. Any and all profits reported to you by BLMIS on account statements were fictitious.

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<sup>1</sup> Section 78III(7)(B) of SIPA states that the filing date is “the date on which an application for a protective decree is filed under 78eee(a)(3),” except where the debtor is the subject of a proceeding pending before a United States court “in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term ‘filing date’ means the date on which such proceeding was commenced.” Section 78III(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

Since there were no profits to use either to purchase securities or to pay you any money beyond the amount that was deposited into your BLMIS account, the amount of money you received in excess of the deposits in your account (\$407,500.00) was taken from other customers and given to you. Accordingly, because you have withdrawn more than was deposited into your account, you do not have a positive "net equity" in your account and you are not entitled to an allowed claim in the BLMIS liquidation proceeding. Therefore, your claim is **DENIED** in its entirety.

Should a final and unappealable court order determine that the Trustee is incorrect in his interpretation of "net equity" and its corresponding application to the determination of customer claims, the Trustee will be bound by that order and will apply it retroactively to all previously determined customer claims in accordance with the Court's order. Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by you in having your customer claim re-determined in accordance with any such Court order.

Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by the Trustee against you.

**PLEASE TAKE NOTICE:** If you disagree with this determination and desire a hearing before Bankruptcy Judge Burton R. Lifland, you **MUST** file your written opposition, setting forth the grounds for your disagreement, referencing Bankruptcy Case No. 08-1789 (BRL) and attaching copies of any documents in support of your position, with the United States Bankruptcy Court **and** the Trustee within **THIRTY DAYS** after October 19, 2009, the date on which the Trustee mailed this notice.

**PLEASE TAKE FURTHER NOTICE:** If you do not properly and timely file a written opposition, the Trustee's determination with respect to your claim will be deemed confirmed by the Court and binding on you.

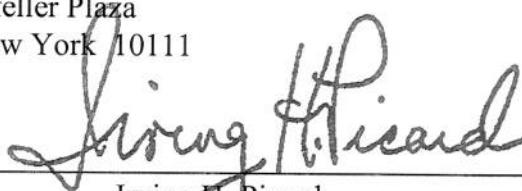
**PLEASE TAKE FURTHER NOTICE:** If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

**PLEASE TAKE FURTHER NOTICE:** You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for  
the Southern District of New York  
One Bowling Green  
New York, New York 10004

and

Irving H. Picard, Trustee  
c/o Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111

  
\_\_\_\_\_  
Irving H. Picard

Trustee for the Liquidation of the Business of  
Bernard L. Madoff Investment Securities LLC

<b>- Table 1 -</b>		
<b>DEPOSITS</b>		
<b>DATE</b>	<b>TRANSACTION DESCRIPTION</b>	<b>AMOUNT</b>
12/21/1992	CHECK	\$125,000.00
12/21/1992	CHECK	\$75,000.00
2/17/1994	CHECK	\$70,000.00
5/20/1996	CHECK	\$50,000.00
<b>Total Deposits:</b>		\$320,000.00
<b>WITHDRAWALS</b>		
<b>DATE</b>	<b>TRANSACTION DESCRIPTION</b>	<b>AMOUNT</b>
12/17/1997	CHECK	(\$30,000.00)
5/6/1998	CHECK	(\$30,000.00)
12/8/1999	CHECK	(\$50,000.00)
4/18/2000	CHECK	(\$25,000.00)
8/31/2000	CHECK	(\$25,000.00)
4/30/2001	CHECK	(\$50,000.00)
12/7/2001	CHECK	(\$50,000.00)
10/17/2002	CHECK	(\$50,000.00)
6/25/2003	CHECK	(\$60,000.00)
12/11/2003	CHECK	(\$70,000.00)
1/24/2005	CHECK	(\$25,000.00)
8/16/2005	CHECK	(\$50,000.00)
3/15/2007	CHECK	(\$50,000.00)
4/3/2007	CHECK	(\$50,000.00)
5/1/2007	CHECK	(\$50,000.00)
4/1/2008	CHECK	(\$42,500.00)
7/9/2008	CHECK	(\$20,000.00)
<b>Total Withdrawals:</b>		(\$727,500.00)
<b>Total deposits less withdrawals:</b>		(\$407,500.00)

## **Exhibit B**

**REDACTED**

**CUSTOMER CLAIM**

Claim Number \_\_\_\_\_

Date Received \_\_\_\_\_

**BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

In Liquidation

**DECEMBER 11, 2008**

(Please print or type)

Name of Customer: Diana Melton Trust DTD 12/5/05

Mailing Address: Redacted

City: Redacted State: Redacted Zip: Redacted

Account No.: 1ZA699

Taxpayer I.D. Number (Social Security No.): 7622

**NOTE:** BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

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**1. Claim for money balances as of December 11, 2008:**

- a. The Broker owes me a Credit (Cr.) Balance of \$ 0 \_\_\_\_\_
- b. I owe the Broker a Debit (Dr.) Balance of \$ 0 \_\_\_\_\_
- c. If you wish to repay the Debit Balance,  
please insert the amount you wish to repay and  
attach a check payable to "Irving H. Picard, Esq.,  
Trustee for Bernard L. Madoff Investment Securities LLC."  
If you wish to make a payment, it must be enclosed  
with this claim form. \$ \_\_\_\_\_
- d. If balance is zero, insert "None." None \_\_\_\_\_

2. Claim for securities as of December 11, 2008:

**PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.**

	<u>YES</u>	<u>NO</u>
a. The Broker owes me securities	<u>X</u>	_____
b. I owe the Broker securities	_____	<u>X</u>
c. If yes to either, please list below:		

Date of Transaction (trade date)	Name of Security	Number of Shares or Face Amount of Bonds	
		The Broker Owes Me (Long)	I Owe the Broker (Short)
See Nov. 30, 2008 ZA699 statements, attached hereto as Exhibit A			
\$1,136,325.21 (market value of securities long, per ZA699-3 statement)			
39,600.00 (market value of securities long, per ZA699-4 statement)			
(55,920.00) (market value of securities short, per ZA699-4 statement)			
Total \$1,120,005.21			

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.

See Exhibits A and B, and documents submitted herewith.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

**PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.**

**NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.**

	<u>YES</u>	<u>NO</u>
3. Has there been any change in your account since December 11, 2008? If so, please explain.	_____	X _____
4. Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker?	_____	X _____
5. Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker?	_____	X _____
6. Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s)	_____	X _____
7. Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming.	_____	X _____
8. Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers.	_____	X _____
9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? if so, give name of that broker.	_____	X _____

Please list the full name and address of anyone assisting you in the preparation of this claim form: Joshua Keller, Esq., Milberg LLP  
One Pennsylvania Plaza, New York, New York 10119.

9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? If so, give name of that broker.

Please list the full name and address of anyone assisting you in the preparation of this claim form:

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

**IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.**

**THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF.**

Date 1/29/09

Signature Mark J. Ouelton

Date \_\_\_\_\_

Signature \_\_\_\_\_

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, e.g., corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

**This customer claim form must be completed and mailed promptly, together with supporting documentation, etc. to:**

Irving H. Picard, Esq.,  
Trustee for Bernard L. Madoff Investment Securities LLC  
Claims Processing Center  
2100 McKinney Ave., Suite 800  
Dallas, TX 75201

# EXHIBIT A

**BERNARD L. MADOFF**  
**INVESTMENT SECURITIES LLC**  
 New York  London  
 Fax (212) 838-4061

DIANA MELTON TRUST DID 12/5/05

885 Third Avenue  
 New York, NY 10022  
 (212) 230-4424  
 800 334-1343  
 Fax (212) 838-4061

885 Third Avenue  
 New York, NY 10022  
 (212) 230-4424  
 800 334-1343  
 Fax (212) 838-4061

**Redacted**

1-7A699-3-0  
 11/30/05  
 PAGE 1  
 \*\*\*\*\*6222  
 PERIOD ENDING  
 FROM DATE PAPER IDENTIFICATION NUMBER

DATE	BOUGHT RECEIVED ON LONG	SOLD DELIVERED ON SHORT	TIN	BALANCE FORWARD	DESCRIPTION	PRICE ON SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/12	1,008		1135	WELLS FARGO & CO NEW		29.800	30,078.40	
11/12	720		1637	HEMLITT PACK CO		34.900	25,156.00	
11/12	624		5461	WAL-MART STORES INC		35.830	34,861.92	
11/12	408		5963	EXXON MOBIL CORP		87.270	35,622.16	
11/12	1,512		9787	INTERNATIONAL BUSINESS MACHS		72.880	110,254.56	
11/12	1,656		10289	INTEL CORP		14.510	24,094.56	
11/12	792		14615	JOHNSON & JOHNSON		59.580	47,218.36	
11/12	1,080		18940	J.P. MORGAN CHASE & CO		38.530	41,655.40	
11/12	576		23266	COCA COLA CO		44.660	25,747.16	
11/12	336		27592	MCDONALDS CORP		55.370	18,617.32	
11/12	624		31918	MERCK & CO		28.550	17,839.20	
11/12	2,280		36244	MICROSOFT CORP		21.810	49,817.80	
11/12	1,152		40570	ORACLE CORPORATION		17.300	19,975.60	
11/12	456		53548	PEPSICO INC		56.410	25,740.96	
11/12	254		54050	APPLE INC		100.780	26,615.92	
11/12	1,944		57874	Pfizer Inc		16.940	33,008.36	
11/12	456		58376	ABBOTT LABORATORIES		54.610	24,920.15	
11/12	864		62200	PROCTER & GAMBLE CO		64.080	55,399.12	
11/12	312		62702	AMGEN INC		59.160	18,469.92	
11/12	600		65526	PHILLIP MORRIS INTERNATIONAL		43.600	26,184.00	
11/12	1,440		67028	BANK OF AMERICA		21.590	31,146.60	
11/12	480		70852	QUALCOMM INC		33.770	16,228.60	
11/12	1,560		71354	CITI GROUP INC		12.510	19,577.60	
				CONTINUED ON PAGE 2				

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

**BERNARD L. MADOFF**  
**INVESTMENT SECURITIES LLC**  
 New York □ London

DIANA MELTON TRUST DTD 12/5/05

885 Third Avenue  
 New York, NY 10022  
 (212) 230-2424  
 800 334-1343  
 Fax (212) 838-4061

Madoff Securities International Limited  
 12 Berkeley Street  
 Mayfair, London W1J 8DT  
 Tel 020 7493 6222

**Redacted**

YOUTH ACCOUNT NUMBER: 1-2A699-3-0  
 PERSONAL NUMBER: 11/30/08  
 YOUTH TAX PAYMENT IDENTIFICATION NUMBER: \*-\*-\*-\*-\*6222  
 PAGE: 2

DATE	BOUGHT ON BEHALF OF	SELLER'S NAME	SELLER'S SYMBOL	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT IN YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/12		360	75178	SCHLUMBERGER LTD	49,480	17,826.80		
11/12		864	75680	COMCAST CORP	16,510	14,298.64		
11/12	1,704		CL A					
11/12	432		79504	AT&T INC	27	46,976.00		
11/12	288		80006	CONOCOPHILIPS	52,510	22,701.32		
11/12	1,752		83830	UNITED PARCEL SVC INC	52,040	14,998.52		
11/12	504		84332	CISCO SYSTEMS INC	16,730	29,380.96		
11/12	600		88156	U S BANCORP	29,530	14,903.12		
11/12	288		88658	CHEVRON CORP	73,430	44,082.00		
11/12	3,048		92482	UNITED TECHNOLOGIES CORP	53,160	15,321.08		
11/12	816		92984	GENERAL ELECTRIC CO	19,630	59,923.24		
11/12	72		96808	VERIZON COMMUNICATIONS	30,410	24,846.56		
11/12	1,050,000		97310	GOOGLE	33,400	24,294.80		
			23741	U S TREASURY BILL DUE 2/12/2009	99,436	1,049,328.00		
11/12				FIDELITY SPARTAN U S TREASURY MONEY MARKET	DIV			
11/12		49,362	18845	DIV 11/12/08		58.34		
11/12	6,938		28213	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1	49,362.00		
				FIDELITY SPARTAN U S TREASURY MONEY MARKET	1			
				DIV 11/19/08	DIV			
				CONTINUED ON PAGE 3		*86		

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

**BERNARD L. MADOFF**  
 INVESTMENT SECURITIES LLC  
 New York  London  
 Main

885 Third Avenue  
 New York, NY 10022  
 (212) 230-2424  
 800 334-1343  
 Fax (212) 838-4061

DIANA MELTON TRUST DTD 12/5/05

11/30/08

11/30/08

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Affiliated with  
 Madoff Securities International Limited  
 12 Berkeley Street  
 Mayfair, London W1J 8DT  
 Tel 020 7493 6222

**Redacted**

1-24699-3-0

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YOUTH PAYEE IDENTIFICATION NUMBER

YOUTH ACCOUNT NUMBER

DATE	BOUGHT RECEIVED ON ACCOUNT	SOLD DELIVERED ON SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT RECEIVED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/19		6,988	53735	FIDELITY SPARTAN			
11/19	75,000		58202	U S TREASURY MONEY MARKET	1	74,944.50	6,988.00
11/19	3,943		62771	U S TREASURY BILL DUE 03/26/2009	99.926	3,948.00	

3/26/2009  
 FIDELITY SPARTAN  
 U S TREASURY MONEY MARKET  
 NEW BALANCE  
 SECURITY POSITIONS  
 AT&T INC  
 ABBOTT LABORATORIES  
 AMGEN INC  
 APPLE INC  
 BANK OF AMERICA  
 CHEVRON CORP  
 CISCO SYSTEMS INC  
 CITI GROUP INC  
 COCA COLA CO  
 COMCAST CORP  
 CLL A  
 CONOCOPHILLIPS  
 EXXON MOBIL CORP  
 GENERAL ELECTRIC CO

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PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

**BERNARD L. MADOFF**  
**INVESTMENT SECURITIES LLC**  
 New York □ London

DIANA MELTON TRUST DTD 12/5/05

885 Third Avenue  
 New York, NY 10022  
 (212) 230-2424  
 800 334-1343  
 Fax (212) 838-4061

Attenuated with  
 Madoff Securities International Limited  
 Mayfair, London W1J 5BT  
 Tel 020 7493 6222

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 YOUR ACCOUNT NUMBER  
 YOUR TAX PAYEE IDENTIFICATION NUMBER  
 Period Ending  
 11/30/08  
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DATE	BOUGHT RECEIVED ON LONG	SOLD ON SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
	720			GOOGLE	292•960		
	1,656			HEWLETT PACKARD CO	35•280		
	408			INTEL CORP	13•800		
	1,080			INTERNATIONAL BUSINESS MACHS	81•600		
	792			J-P. MORGAN CHASE & CO	31•660		
	336			JOHNSON & JOHNSON	58•580		
	624			MCDONALDS CORP	58•750		
	2,280			MERCK & CO	26•720		
	1,152			MICROSOFT CORP	20•220		
	456			ORACLE CORPORATION	16•090		
	1,944			PENSICO INC	56•700		
	600			PETZER INC	16•430		
	604			PHILIP MORRIS INTERNATIONAL	42•160		
	480			PROCTER & GAMBLE CO	64•350		
	360			QUALCOMM INC	33•570		
	3,948			SCHLUMBERGER LTD	50•740		
				FIDELITY SPARTAN	1		
				U S TREASURY MONEY MARKET			
				U S BANCORP	26•980		
				UNITED PARCEL SVC INC	57•600		
				CLASS B			
				U S TREASURY BILL	99•971		
				DUE 03/26/2009			
				3/26/2009			
				UNITED TECHNOLOGIES CORP			
				CONTINUED ON PAGE 5			
					48•530		

BERNARD L. MADOFF  
INVESTMENT SECURITIES LLC  
New York  London



MADDF

New York

London

DIANA MELTON TRUST DTD 12/5/05

885 Third Avenue  
New York, NY 10022  
(212) 230-2424  
800 334-1343  
Fax (212) 838-4061

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&lt;/

**BERNARD L. MADOFF**  
INVESTMENT SECURITIES LLC  
New York, N.Y.

**BERNARD L. MADOFF**  
INVESTMENT SECURITIES LLC  
New York □ London

**Madoff Securities International Limited**  
12 Berkeley Street  
Mayfair, London W1J 8DT  
Tel 020 7493 6222

DIANA MELTON TRUST DTD 12/5/05

PERIOD ENDING

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RECEIVED ON LONG	DELIVERED ON SHORT	TRN	DESCRIPTION	PRICE ON SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
			YEAR-TO-DATE SUMMARY			
			DIVIDENDS			
			GROSS PROCEEDS FROM SALES			
					7,9704.56	7,9394.593.83

**PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES**

**BERNARD L. MADOFF**  
 INVESTMENT SECURITIES LLC  
 New York □ London  
 M&DF

885 Third Avenue  
 New York, NY 10022  
 (212) 230-2424  
 800 334-1343  
 Fax (212) 838-4061

DIANA MELTON TRUST DTD 12/5/05

11/30/08

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Madoff Securities International Limited  
 12 Berkeley Street  
 Mayfair, London W1J 8DT  
 Tel 020 7993 6222

DATE	BOUGHT RECEIVED ON LONG	SOLD DELIVERED ON SHORT	TIN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
				BALANCE FORWARD			
11/12		24	44896	S & P 100 INDEX NOVEMBER 460 CALL	15.800		66,447.00
11/12		24	49222	S & P 100 INDEX NOVEMBER 450 PUT	17.800	42,744.00	37,896.00
11/19		24	35326	S & P 100 INDEX DECEMBER 430 CALL	26		62,376.00
11/19		24	39651	S & P 100 INDEX DECEMBER 420 PUT	30	72,024.00	
11/19		24	43976	S & P 100 INDEX NOVEMBER 460 CALL	3	7,224.00	
11/19		24	48301	S & P 100 INDEX NOVEMBER 450 PUT	37	88,776.00	
				NEW BALANCE			133,503.00
				SECURITY POSITIONS	NFT PRICE		
				S & P 100 INDEX DECEMBER 430 CALL	23.300		
				S & P 100 INDEX DECEMBER 420 PUT	16.500		
				MARKET VALUE OF SECURITIES			
				LONG			
				39,600.00			
				SHORT			
				55,920.00-			

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

# EXHIBIT B

**EXHIBIT B:**

1. This Claim Form, exhibits, and supporting documentation (collectively "Claim Form") is submitted pursuant to the December 23, 2008 Order of the Honorable Burton R. Lifland and the instructions disseminated by Irving H. Picard, Trustee for Bernard L. Madoff Investment Securities LLC ("Trustee"), on December 11, 2008.
2. The information provided in the Claim Form is based on information provided in the Claimant's latest Madoff account statement and additional information known by the Claimant as of the date of the submission of the Claim Form. The Claimant reserves the right to amend and/or supplement this Claim Form upon the receipt of further information, or upon request by the Trustee for additional information.
3. The Claimant reserves the right to amend the Claim Form in the event of any recoveries by the Trustee or any other party under the avoidance powers of the Bankruptcy Code or otherwise, or in the event of rejections of executory contracts pursuant to Bankruptcy Code Section 365, whether such amendments are made pursuant to Bankruptcy Code Sections 105, 502(g), or 502(h), Bankruptcy Rule 3002(c)(3), (4), other provisions of applicable bankruptcy law, or general principles of law or equity.
4. The Claimant hereby requests that the Claim Form be considered as a proof of claim in *In re Bernard L. Madoff Investment Securities LLC*, No. 08-01789 (Bankr. S.D.N.Y.).
5. This Claim Form is required to be submitted pursuant to the Court's January 2, 2009 Order and the Trustee's instructions to the Claimant. To the extent permitted by applicable law, the Claimant does not, by submitting the Claim Form, consent to the jurisdiction of the Bankruptcy Court nor does Claimant waive any right to trial by jury.
6. The Claimant reserves all rights, claims, and/or defenses as to and/or against any and all parties potentially liable for the losses sustained by the Claimant, including, without limitation, Bernard L. Madoff Investment Securities LLC and its owners, partners, employees, and affiliates, as well as any potentially liable third parties including, without limitation, investment advisors, "feeder funds," accountants, and auditors.
7. The Claimant further reserves all rights, claims, and/or defenses as to and/or against any persons and/or creditors asserting claims against Bernard L. Madoff Investment Securities LLC, its employees, owners, and/or affiliates, in bankruptcy or otherwise.
8. The Claimant reserves all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever, notwithstanding the submission of any such information to the Trustee.
9. To the extent the Claimant has disclosed to the Trustee documents containing accounting and/or legal advice, the Claimant does not waive any potential privileges applicable thereto.

10. The Claimant reserves all rights with respect to submitting information to the Internal Revenue Service regarding gains, losses, and/or theft of assets.
11. The Claim Form and supporting documents contain confidential information. The Claimant submits this information to the Trustee subject to the condition that this information will not to be disclosed to any third parties, other than under seal to the Court, absent the Claimant's express consent or Court order.
12. The Claimant submits herewith documents in support of the Claimant's claim, including documents containing information regarding account transactions, such as contributions and/or withdrawals. The Claimant reserves any arguments that such documents are not relevant to the Trustee's inquiry. The Claimant further reserves the right to supplement this submission, including the submission of additional documents, if deemed necessary. Below is a list of the documents submitted herewith:

**2007:**

- Madoff Account Statements for periods ending 9/30-12/31.
- Portions of Diana Melton Trust Agreement.

**2008:**

- Portfolio Management Report as of 9/30.
- Madoff Account Statements for periods ending 1/31-11/30.

## **Exhibit C**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

In the Matter of:

NEW TIMES SECURITIES  
SERVICES, INC.

Debtor

Plaintiff

)

)

)

)

- 1) Application filed by proposed class claimants to authorize and approve the filing of a class proof of claim and for a certification of the putative class and to shorten time for the hearing

Memorandum by proposed class claimants

Memorandum by Plaintiff Securities Investor Protection Corporation

Memorandum of Law by Trustee James W. Giddens

Affidavit of Derek J. T. Adler in opposition

United States Bankruptcy  
Court  
Westbury, New York

July 28, 2000  
10:00 a.m.

B E F O R E :

HONORABLE STAN BERNSTEIN  
United States Bankruptcy Judge

A P P E A R A N C E S :

HUGHES HUBBARD & REED LLP  
Attorney for James W. Giddens, Trustee  
One Battery Park Plaza  
New York, New York 10004  
BY: JAMES W. KOBAK, JR., ESQ.  
DANIEL S. LUBELL, ESQ.

1 THE COURT: Okay, so, you're telling me that  
2 this is very different from the open transaction.

3 MR. HARBECK: Correct.

4 THE COURT: Okay, so, now we're dealing with a  
5 closed transaction, where the money is there, you have  
6 interest in a --

7 MR. HARBECK: The securities are there.

8 THE COURT: -- real --

9 MR. HARBECK: Not the money is there. The  
10 securities are supposed to be there.

11 THE COURT: No, no -- yeah, you have -- you  
12 have an ownership interest in the securities; namely,  
13 shares of the mutual fund, of a mutual fund that is real,  
14 existing as of the petition date.

15 MR. HARBECK: Dreyfus, Janus, you name it.

16 THE COURT: Okay.

17 MR. HARBECK: Now, what Congress did is it said  
18 it wants to give the Trustee and SIPC a very good idea of  
19 what securities have to -- that the Trustee is going to  
20 have to go out into the marketplace and buy. So, if you  
21 file within sixty days, you'll get the securities, without  
22 question. Whether -- if they triple in value, you'll get  
23 the securities.

24 But, if --

25 THE COURT: Even -- even if --

38

MR. HARBECK: Even if they're not there.

THE COURT: Even if they're not there.

MR. HARBECK: Correct.

THE COURT: In other words, if the money was diverted, converted --

MR. HARBECK: And the securities were never purchased.

THE COURT: Okay.

MR. HARBECK: And, if those positions triple, we will gladly give the people their securities positions.

THE COURT: But, you've got to jump.

MR. HARBECK: But, you've got to act fast, yeah. And, Congress did that --

THE COURT: Because -- because --

MR. HARBECK: -- because of the fluctuations.

THE COURT: -- because there's a concern -- because there's a concern that the value of this mutual fund might skyrocket and it's going to cost SIPC a lot more money.

MR. HARBECK: Six months down the line, that's right.

THE COURT: Okay, all right. And, you don't want people playing games with you.

MR. HARBECK: That's correct.

THE COURT: Deciding when they're going to --

(516) 741-5342 Tankoos Reporting Co. (212) 349-9692

**CERTIFICATE OF SERVICE**

I, Jonathan M. Landers, certify that on the 17th day of November, 2009, I caused a true and correct copy of the foregoing OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM (The Diana Melton Trust, Dated 12/05/05 - 1ZA699) to be filed and served on the parties to this action via electronic filing. In addition, service was effectuated to the following address via Federal Express:

Irving H. Picard, Trustee  
c/o Baker Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10011

s/ Jonathan M. Landers